STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)
	)
IMELDA HERNANDEZ,	)
Complainant,	)
	)
and	)**Charge No: 2000 CA 0578**
	)**EEOC No: 21 B 993150**
	)**ALS No: 11433**
	)
COURTESY MANUFACTURING COMPANY,	)
Respondent.	)

RECOMMENDED ORDER AND DECISION

On December 19, 2000, Complainant filed the instant Complaint alleging Respondent, Courtesy Manufacturing Company, discriminated against her on the basis of age in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq*. (Act). A public hearing was held on November 18 and 19, 2002. This matter is ready for decision.

CONTENTIONS OF THE PARTIES

Complainant contends Respondent unlawfully discriminated against her on the basis of age when it discharged her from her job on August 11, 1999. Respondent contends that it did not discharge Complainant and further contends that Complainant resigned.

FINDINGS OF FACT

The following findings of fact were determined to have been proven by a preponderance of the evidence. Assertions made at the public hearing that are not addressed herein were determined to be unproven or immaterial to this decision.

1. Complainant was born March 26, 1955.
2. Complainant has five children, ages 28, 26, 25, 10 and 8.

3. Complainant began working for Respondent (Respondent or employer) March 15, 1977 in the assembly department.
4. Complainant voluntarily left Respondent's employ in January 1982 because she did not have babysitting services. Respondent then rehired Complainant in March 1982.
5. Complainant worked as an inspector in the Quality Control Department for the last five years of her employment, which ended August 11, 1999. At that time she was 44 years old.
6. Complainant received regular annual raises from August 1983 throughout March 1999 and favorable performance evaluations for 1989, 1990, 1991, 1992, 1995, 1996, 1997. (There were no evaluations presented for 1993 and 1994).
7. Harry Castaneda (Castaneda) was Quality Control Manager. Castaneda reported to Thomas White (White). White has been President of Respondent since 1996 and was 52 years old in 1999.
8. White did not directly supervise the non-supervisory personnel and relied upon information from his supervisors and others when making personnel decisions.
9. Castaneda supervised seven inspectors and was Complainant's supervisor for her last 1 ½ years of employment.
10. Dalia Mixon (Mixon) began working in 1999 for Respondent as a floor tech and was then promoted to administrative assistant to Castaneda. In this position, Mixon managed the quality department when Castaneda was not available. She also worked in the place of other employees who were temporarily off for vacation.
11. Castaneda hired Mixon and had the authority to hire and discharge his subordinates.

12. While under Castaneda's supervision, Complainant and Mixon had casual conversations with Castaneda, which included discussions about their respective ages and other subjects.
13. Alex (last name not revealed) was a supervisor for Respondent.
14. Mirella Rodriguez (Rodriguez) was hired by Respondent in 1983 and was 32 or 33 years old in August 1999. Rodriguez worked in the office, in shipping, and in the hardware crib.
15. Kyle Winchester (Winchester) is Rodriguez' supervisor.
16. In 1999, there was a well-circulated rumor in the workplace that Alex and Rodriguez were dating each other.
17. Approximately 2-3 months prior to August 1999, Castaneda spoke to Complainant about spreading rumors about Rodriguez in the workplace. Complainant denied that she had been spreading any rumors.
18. Complainant and Rodriguez have known each other for a long time because they both are from the same hometown in Mexico. Prior to August 6, 1999, Complainant and Rodriguez had been friends and talked together all the time.
19. During 1999, Mixon observed Alex punch Rodriguez' time card almost every day. Mixon reported this to Castaneda.
20. During 1999, Complainant observed Alex punch Rodriguez' time card.
21. At Respondent's workplace, it is considered a dishonest practice for one employee to punch another employee's time card.
22. On Friday, August 6, 1999, Complainant confronted Rodriguez, saying that she had observed Alex punching Rodriguez' time card for her. Later in the same day, Complainant was speaking with an auditor and Mixon in performance of her job duties when Rodriguez approached Complainant and began talking to her in Spanish. Mixon told Rodriguez to move on. Later, at the end of the workday,

Rodriguez confronted Complainant in the workplace bathroom and began yelling and screaming at her and threatening to get her fired. After the altercation that same day, Complainant and Rodriguez went to Winchester's office to speak with him about the argument. Winchester spoke to Rodriguez and Complainant separately. Winchester told Complainant that he was going to speak to Castaneda about the situation later.

23. The following Monday, August 9, 1999, Complainant came to work and the workday was uneventful. The next day, Tuesday, August 10, 1999, Complainant became aware that Castaneda had received information alleging that Complainant had attempted to run over Rodriguez with her car in the workplace parking lot. Complainant immediately went to Castaneda to deny the rumor. Complainant was very upset by the rumor and was crying when she spoke to Castaneda. While speaking to Castaneda, Castaneda asked Complainant if she wanted to quit and Complainant told Castaneda that she did not want to quit, but she wanted to go home at lunchtime because she was upset. Castaneda suggested that Complainant take the rest of the week off and think about what she wanted to do. Complainant agreed to take vacation time and return on Monday. Complainant accompanied Castaneda to the personnel office where a clerk filled out what Complainant believed to be a vacation request and Complainant signed it. Complainant gave her caliper and keys to Mixon. Complainant usually gives her caliper and keys to a co-worker or supervisor whenever she it takes time off or goes on vacation so that another worker may have the appropriate tools to temporarily perform Complainant's job duties.
24. The same day, Castaneda informed Mixon that Complainant would be going on vacation the rest of the week and would be back on Monday and ordered Mixon

to retrieve the keys and caliper from Complainant so Mixon could perform Complainant's job in her absence.

25. When Complainant left on August 10, 1999, she left her tools, keys, clothes, shoes and other belongings in her locker.
26. Sometime during August 10 or 11, 1999, White and Castaneda made the decision to discharge Complainant.
27. On August 11, 1999, Mixon observed a letter on the office computer written by Castaneda indicating Complainant was being separated from employment and inquired about it. Castaneda responded to Mixon that White did not believe Complainant, that White believed Rodriguez. Castaneda further stated, "Look at Imelda. She's old, she's unattractive, and you know, Mirella is young, she has a nice figure, she's good looking."
28. On August 11, 1999, while on vacation, Complainant received a message to telephone Castaneda. When Complainant telephoned Castaneda, Castaneda informed Complainant not to come back to work because White had made the decision to accept her resignation. Complainant responded that she had not quit, that she had just taken three vacation days.
29. Complainant received a letter by mail dated August 11, 1999, addressed to her from Respondent, signed by Castaneda, and informing Complainant "Courtesy Mfg. Co. has agreed to accept your resignation. Courtesy Mfg, Co. has accepted your resignation as of 11:00 AM on August 11, 1999 per our discussion in the Training Room. Unfortunately we feel it is [sic] the best interest of you and CMC…."
30. Two days later, Complainant went to the employer's jobsite to speak with White about getting her job back; however, White's secretary would not allow her to speak to him.

31. White relied upon information from Castaneda in agreeing that Complainant should not return to work.
32. Complainant was initially replaced by Juan Mateo, (Mateo) age 32, on September 30, 1999 for a short period of time; then John Potter, (Potter) whose age was in his 60's, replaced Mateo.
33. After being separated from her employment with Respondent, Complainant looked for jobs every day. Mostly, Complainant visited companies personally and filled out applications at the employment site. Complainant applied with an employment agency, which obtained a temporary position for her with C&C Technology for five months in March 2000, after which C&C hired her permanently. Complainant made $8.00 per hour at C&C.
34. Complainant worked for one year at C&C Technology, then left and applied for a position at Pampered Chef. Complainant was hired at Pampered Chef in March 2001, a week after having left C&C Technology. Complainant made $8.00 per hour when she first started at Pampered Chef and now makes $8.30 per hour.
35. While working for Respondent, Complainant's hourly wage went from $5.30 to $11.30 in the time period from August 1982 to March 1999.

CONCLUSIONS OF LAW

1. The Illinois Human Rights Commission has jurisdiction over the parties to and the subject matter of the Complaint.
2. Complainant demonstrated a *prima facie* case of age discrimination.
3. Respondent articulated a legitimate, non-discriminatory reason for its action.
4. Complainant proved that Respondent's articulated reason was false.
5. Complainant failed to establish, by a preponderance of the evidence, that Respondent's proffered reason was a pretext for unlawful discrimination.

DETERMINATION

Complainant has not established, by a preponderance of the evidence, that Respondent discharged her because of her age.

DISCUSSION

A Complainant bears the burden of proving discrimination by a preponderance of the evidence, in accordance with the Act at 775 ILCS 8A-102(I). Typically, in cases alleging age discrimination, the Commission has applied a three-step analysis to determine whether there has been a violation of the Act. **McDonnell Douglas Corp. v. Green**, 411 U.S. 793, 93 S.Ct. 1817 (1973) and **Texas Dept. of Community Affairs v. Burdine,** 450 U.S. 248, 101 S. Ct. 1089 (1981), adopted by the Illinois Supreme Court in **Zaderaka v. Illinois Human Rights Commission**,131 Ill.2d 172, 545 N.E.2d 684 (1989). The burden of proving that the employer engaged in discrimination remains at all times with the Complainant. **Burdine***, supra.*

Under this three-step approach, a complainant must first establish a *prima facie* case of unlawful discrimination. Then the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its adverse action. Once respondent successfully makes this articulation, the presumption of unlawful discrimination drops and the complainant is required to prove, by a preponderance of the evidence, that the respondent's articulated reason is a pretext for unlawful discrimination. The latter requirement merges with the complainant's ultimate burden of proving that the respondent unlawfully discriminated against complainant.

In an age discrimination case based on discharge, the ultimate burden on the Complainant is to prove that a discharge was based on age. **Castleman and Freeman United Coal Mining Co.,** 34 Ill. HRC Rep. 110 (1987); **LaMontagne v. American Convenience Prod., Inc**., 750 F.2d 1405 (7th Cir. 1984); **Columbus v. Prudential Insurance Co. of America**, 688 F.2d 547 (7th Cir. 1982). To establish a *prima facie* case

of age discrimination, complainant must prove, not that age was the sole factor motivating the employer's discharge decision, but rather that age was a "determining factor," in the sense that she would not have been discharged "but for" the employer's motive to discriminate against her because of her age. **Loeb v. Textron, Inc**., 600 F.2d 1003 (1st Cir. 1979). The complainant may meet this burden directly by presenting direct evidence that age was a determining factor in the discharge or may prove his case indirectly pursuant to the traditional analysis set forth in **McDonnell-Douglas Corp. v. Green,** 411 U.S. 792 (1972) and its progeny.

Background

On August 6, 1999, a Friday, around one half hour after having started work, Complainant was in the workplace bathroom when she observed Rodriguez come in. Complainant confronted Rodriguez with information that Alex had punched Rodriguez' time card prior to Rodriguez having arrived to work. After some discussion between the two, Rodriguez put her belongings in her locker and left. Later that same day, Rodriguez approached Complainant while she was working with Mixon and Mixon directed Rodriguez away from Complainant. Later, at the end of the workday, Rodriguez confronted Complainant in the workplace bathroom and an argument ensued. Immediately following the altercation, Complainant and Rodriguez went to Winchester's office to speak with him about the argument. Winchester spoke to Rodriguez and Complainant separately. Winchester told Complainant that she and Rodriguez must stop the problem and should stay away from one another. Winchester further told Complainant that he was going to speak to Castaneda about the situation later.

Complainant went home and returned to work the following Monday and Tuesday. While Monday was uneventful, on Tuesday, Complainant became aware of a rumor indicating that Rodriguez had reported to management that Complainant had attempted to run Rodriguez over with her car in the employer's parking lot. Complainant

immediately sought out Castaneda to deny the rumor. Complainant was disturbed by the rumor and was crying and upset when she spoke to Castaneda. Complainant asked Castaneda if she could go home the remainder of the workday. Castaneda asked Complainant if she wanted to quit and Complainant responded that she did not want to quit, but she wanted to go home at lunchtime because she was upset. Castaneda suggested that Complainant take the rest of the week off and think about what she wanted to do. Complainant agreed to take vacation time for the remainder of the week and return on Monday. Complainant accompanied Castaneda to the personnel office where a clerk filled out what Complainant believed to be a vacation request form and Complainant signed it. Complainant gave her caliper and keys to Mixon. Complainant usually gives her caliper and keys to a co-worker or supervisor whenever she takes time off or goes on vacation so that another worker may have the appropriate tools to temporarily perform Complainant's job duties.

Direct evidence

Complainant attempts to demonstrate direct evidence of age discrimination through evidence of Respondent's statement showing discriminatory animus. Complainant testified that, following the altercation with Rodriguez, Mixon informed her that Castaneda told Mixon that White believed Rodriguez' version of the altercation because Rodriguez "was younger and she was good looking or better looking and better body." Mixon confirmed during testimony that Castaneda told her that White did not believe Complainant's version of the altercation and that White believed Rodriguez. Mixon further testified that Castaneda stated "Look at Imelda. She's old, she's unattractive, and you know, Mirella is young, she has a nice figure, she's good looking." I find Mixon's testimony reciting Castaneda's statement credible. However, Mixon's testimony indicates that Castaneda himself attributed this physical characterization of Rodriguez as the reason White believed Rodriguez' version of the altercation rather than

Complainant's version. There was no foundation established that White actually articulated to Castaneda this physical characterization of Rodriguez as the basis for his belief. Therefore, this statement by Castaneda can be dismissed as banter.

Indirect Evidence

Complainant presents evidence of an indirect case of age discrimination. An indirect case of age discrimination requires the Complainant to prove that 1) she is a member of the protected class of persons over 40 years of age; 2) she was performing her job well enough to meet the employer's legitimate expectations; 3) there was an adverse job action taken; and 4) she was replaced by a younger employee outside the protected classification**. Illinois J. Livingston Co. v. Illinois Human Rights Commission**, 302 Ill.App.3d 141, 704 N.E.2d 797, 235 Ill. Dec. 224 (1st Dist. 1998). The first element is undisputed. Complainant was 44 years of age when she separated from the Respondent.

As to the second element, Respondent contends Complainant was not meeting its legitimate expectations at the relevant time period. However, Complainant maintains she was performing her job well enough to meet the employer's legitimate expectations and the evidence supports Complainant's position. Complainant received regular annual raises from August 1983 throughout March 1999 and favorable performance evaluations for 1989, 1990, 1991, 1992, 1995, 1996, 1997. (There were no evaluations presented for 1993 and 1994). Although Complainant's 03/16/1998 evaluation includes the comments "easily distracted; too much gossip; focus more on the problem not the personality;" and "reducing the gossip," Complainant credibly testified that these comments were not on her evaluation at the time she signed it, implying that the comments were filled in after she had signed it. Therefore, I am disregarding the 03/16/1998 evaluation. The totality of Complainant's written performance evaluations supports that Complainant was meeting the employer's legitimate expectations.

The fourth element has also been adequately established. Juan Mateo, age 32, assumed the duties of Complainant's position for a short time and John Potter, who is in his sixties, assumed Complainant's duties after Mateo.

As to the third element, Complainant contends she was subject to an adverse job action when she was discharged, while Respondent maintains there was no adverse job action taken because Complainant voluntarily resigned.

Respondent maintains that Complainant's separation from employment was brought about when Complainant tendered her resignation and White accepted it. This argument is untenable as the evidence presented overwhelmingly supports that Complainant was discharged, that Complainant did not resign and that Respondent did not believe Complainant had resigned.

During a conversation with Castaneda on August 10, 1999, Complainant requested to leave work for the afternoon because she was upset after learning of allegations that Rodriguez had reported to management that Complainant had attempted to run Rodriguez over with Complainant's car in the workplace parking lot. Castaneda allowed Complainant to leave for the afternoon and suggested that Complainant take some time off. Complainant agreed to take the next three days off for vacation. Complainant gave her keys and work tools to Castaneda and his assistant, Mixon, so that the keys and tools would be available for Mixon to work in Complainant's position during her absence. Complainant had followed this procedure whenever she took vacation or anticipated being off from work. Complainant filled out what she believed to be a vacation request and left. When Complainant left, she did not clean out her locker and left tools, keys, clothes, shoes and other items in her locker. Mixon testified credibly that, prior to Complainant leaving, Castaneda informed her to retreive the keys and caliper from Complainant so she could perform Complainant's job duties while Complainant was on vacation the rest of the week.

The next day, while Complainant was on vacation, Complainant returned a telephone call to Castanada. During the discussion, Castaneda informed Complainant that White had accepted her resignation and ordered her not to return to work. Complainant protested that she had not resigned and that she wanted her job. Complainant returned to the employer's business two days later in order to speak with White and to inform him that she had not quit and that she wanted to continue in her job; however, White's secretary would not allow Complainant to speak with him.

Respondent's contention that it reasonably understood that Complainant had resigned is unconvincing. Complainant made no statements and engaged in no conduct from which to infer a resignation. Complainant gave her work tools to Mixon — a practice she always followed when leaving for vacation — and left the workplace, not bothering to clean her locker of her personal belongings. Also, after the August 6, 1999 altercation with Rodriguez, Complainant voluntarily took immediate steps to tell her version of the altercation to Rodriguez' supervisor and — immediately after hearing rumors on August 10, 1999, that Rodriguez had reported to management that Complainant purportedly tried to run her over in the parking lot — Complainant voluntarily sought out Castaneda to deny the accusation. This behavior of immediately hastening to management to profess one's innocence is simply not the conduct of a 22-year employee who had suddenly decided to tender her resignation. Besides, although Complainant received regular hourly raises throughout her career with Respondent, it took Complainant 17 years from 1982 to 1999 to increase her hourly wage from $5.30 to $11.30 — a total $6.00 per hour increase. It is difficult for me to believe that Complainant would hastily resign a position after she had spent so many years working her way up the hourly wage ladder.

Moreover, the record indicates that Complainant had been previously warned about engaging in office gossip and rumor, so the implication that she would suddenly tire of the office distress such conduct brings about and abruptly resign a 22-year career is illogical.

The record supports that Complainant did not resign and that neither Castaneda nor White reasonably believed that she did. Therefore, Complainant was subject to the adverse action of discharge and thus, Complainant has demonstrated a *prima facie* case.

Respondent's articulation

Respondent's articulation has been discussed above. Thus, the next step is to analyze whether Complainant has established Respondent's articulation as a pretext for age discrimination.

A Complainant may establish pretext by showing either that (1) the employer's explanations are not worthy of belief; (2) the proffered reason had no basis in fact; (3) the proffered reason did not actually motivate the decision; or (4) the proffered reason was insufficient to motivate the decision. **Grohs v. Gold Bond Prod.**, 859 F.2d 1283 (7th Cir. 1988), **Burnham City Hospital v. Illinois Human Rights Commission**, 126 Ill.App.3d 999 (4th Dist. 1984).

Complainant's showing of pretext

For the reasons previously discussed, Respondent's articulation is shown to be false, as Complainant did not resign, Complainant was discharged. However, while citing **St. Mary's Honor Center v. Hicks**, 113 S.Ct. 2742 (1993) and **Paul Mariahazy and Playboy Enterprises, Inc**., __ Ill. HRC Rep. __, (1991CA2664, September 9, 1996), the Commission in **Hilton v. Dept. of Central Management Services**, __ Ill. HRC Rep. __, (1988CF3698, March 29, 1999) said that a finding that the respondent's articulation is false does not compel judgment for the complainant since it could be that

the respondent's false articulation is not a pretext for unlawful discrimination, but for some other ignoble reason not covered by the Act. But, under **Hicks**, there must be evidence in the record from which the finder of fact can deduce an alternative, nondiscriminatory reason for respondent's adverse action.

Such is the case here, where the facts do not support that Complainant's age was a factor in her discharge. Although Complainant has demonstrated that Respondent's articulation is false, the evidence does not support that Respondent's false articulation is a pretext for age discrimination. The record supports that Respondent used Complainant's vacation as a convenient, although craven, opportunity to effect her discharge while she was away from the workplace. However, the substance of the altercation between Complainant and Rodriguez and the proximity of the altercation and the discharge cannot be ignored. Complainant made accusations that a supervisor, Alex, had been punching in the time card of an hourly employee, Rodriguez. There is credible evidence in the record that Alex regularly engaged in this conduct in full view of other employees and that this conduct was considered dishonest in the workplace.

Against this background, there is sufficient evidence in the record to deduce that Castaneda and White made the decision to discharge Complainant because each believed that, by confronting Rodriguez, Complainant was bringing unwanted attention to Alex' conduct, which management preferred to ignore, and that the confrontation was lingering and causing residual workplace friction. As this reason for discharge may arguably qualify as an "ignoble" one, it is not conduct covered by the Act.

RECOMMENDATION

Based on the foregoing, I recommend that the Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

By:_____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: January 22, 2004

Hernandez v. Courtesy Manf.Co.
Recommended Order and Decision
ALS #11433